

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILL EDWARD MORRIS,

Defendant-Appellant.

UNPUBLISHED

April 14, 2011

No. 296490

Wayne Circuit Court

LC No. 09-010158-FH

Before: FORT HOOD, P.J., and TALBOT and MURRAY, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv), and possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). He was acquitted of an additional charge of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to concurrent prison terms of 38 months to 20 years for each conviction. He appeals as of right. We affirm.

The testimony at trial indicated that a police officer observed defendant engage in apparent narcotics transactions outside an apartment building. A group of officers later returned to the apartment building to investigate. Upon noticing the officers, defendant fled inside the apartment building. The police recovered a firearm and a plastic bag containing packets of cocaine and heroin near the door of the apartment unit into which defendant fled. The trial court determined that defendant “ditch[ed]” the bags of heroin and cocaine, but acquitted defendant of the felony-firearm charge, explaining:

I do not believe for one second that in this apartment they’ve got guns laying on the – in the hallway. But I also believe that someone discarded that gun. The question is, do I really believe that it’s this defendant? Well, he’s the person who’s running inside. He’s the one that they get. But he’s arrested in apartment four.

I know that he made that hand-to-hand transaction, so I know he was in possession of the narcotics. I guess I’ll give him the benefit of the doubt on the gun. . . .

* * *

But I am convinced that this defendant discarded the heroin and the cocaine, and I find him guilty of possession with the intent to deliver.

I'll enter a finding of not guilty on the felony firearm.

Defendant now argues that his convictions for the drug offenses must be vacated because the drugs and firearm were recovered from the same location, and it was inconsistent for the trial court to find that he possessed the drugs, but acquit him of the firearm possession charge.

In actions tried without a jury, this Court reviews a trial court's factual findings for clear error. MCR 2.613(C); *People v Knight*, 473 Mich 324, 338; 701 NW2d 715 (2005). Questions of law are reviewed de novo. *Id.* A jury may render apparently illogical or inconsistent verdicts, such as convicting a defendant of felony-firearm while acquitting him of the underlying felony. *People v Wakeford*, 418 Mich 95, 109 n 13; 341 NW2d 68 (1983); *People v Lewis*, 415 Mich 443, 452-453; 330 NW2d 16 (1982). However, a trial court sitting as the finder of fact may not enter an inconsistent verdict. *People v Ellis*, 468 Mich 25, 26; 658 NW2d 142 (2003). For example, in *People v Walker*, 461 Mich 908; 603 NW2d 784 (1999), the Court determined that the verdict was "patently inconsistent" where the trial court dismissed a felony-firearm charge without explanation but convicted the defendant of malicious destruction of property, where the destruction was caused by the discharge of a firearm. In *Ellis*, the trial court convicted the defendant of carjacking and felonious assault. The trial court made findings that the defendant fired a gun to either injure the complainants or make them fearful of an injury, but acquitted him of charges of felony firearm and felon in possession of a firearm. The Supreme Court concluded that the acquittals and the factual findings were "plainly inconsistent" and "cannot be rationally reconciled." *Ellis*, 468 Mich at 27.

The relief that is available when a trial court enters an inconsistent verdict depends on the findings that resulted in the inconsistency. If the court's factual findings support conviction, but the court acquits, the error in dismissing a charge cannot be corrected on appeal because of double jeopardy principles. Thus, no relief was granted in *Walker*, 461 Mich 908, and *Ellis*, 468 Mich at 28. However, if the trial court's factual findings support acquittal and the court convicts, the conviction must be reversed. See *People v Williams*, 99 Mich App 463, 464; 297 NW2d 702 (1980). If the inconsistency is due to a misapplication of the law with respect to an offense of which the defendant is acquitted, this Court will not grant relief. See *People v Smith*, 231 Mich App 50, 53; 585 NW2d 755 (1998).

In this case, the trial court expressly found that defendant possessed the narcotics that the police recovered outside the apartment doorway. Although no one directly saw defendant discard the narcotics, the trial court relied on other circumstantial evidence to find beyond a reasonable doubt that defendant possessed those narcotics. The circumstantial evidence included the earlier observation of defendant engaging in apparent narcotics transactions in front of the building. The firearm possession charge was not supported by the same level of circumstantial evidence. Although it would have been permissible for a rational trier of fact to infer that the same individual who discarded the narcotics also discarded the weapon, the trial court was not obligated to do so. There was also evidence that other individuals were in the area, including two individuals in apartment four who were ticketed for unspecified offenses. The trial court's factual findings support defendant's convictions for the two narcotics offenses and, given the

evidence presented, it was not inherently inconsistent for the trial court to find defendant guilty of the two narcotics offenses, but acquit him of the felony-firearm charge. Therefore, defendant is not entitled to appellate relief.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Christopher M. Murray